IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 16 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GANDRAP MAHMADBHAI ALEKBHAI

Versus

ABDULBHAI C GANDRAP

Appearance:

MR JC SHETH for Petitioners

MR VC DESAI for Respondent No. 1, 2

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 12/01/2001

ORAL JUDGEMENT

1. This Appeal is filed by the appellants - original plaintiffs against the judgment and decree passed by the Extra Asst. Judge, Mehsana, on 25th August, 1983, in Regular Civil Appeal No. 105 of 1981, whereby the Extra

Assistant Judge, Mehsana, allowed the Appeal and set aside the judgment and decree passed by learned Civil Judge (JD), Kalol, on 31st of July, 1981 in Regular Civil Suit No. 238 of 1975 and further ordered that the suit be remanded to the Trial Court for fresh determination after raising the additional issues on the points which have been discussed in the judgment.

2. The present appellants were the original plaintiffs in the above said Civil Suit No. 238 of 1975. They have filed suit for redemption of mortgage stating that one deceased Hiraji Amiji was the owner of property house, bearing Survey No.61 Sanad No. 1734, which is the suit property and deceased Hiraji Amiji mortgaged that house with the original defendant No.1 Abdulbhai Chandbhai for Rs. 25,000/- on 15th November, 1960 and executed the registered deed for the same transaction. The house, according to the plaintiffs, has been in possession of original defendant No.1 Abdulbhai Chandbhai, as a mortgagee. It was contended by the respondents - original plaintiffs that the plaintiffs as well as defendants No. 2, 3 and 4 were the legal heirs of deceased Hiraji Amiji, and as such, they were entitled the decree of redemption in their favour. The suit came to be contested by defendant No.1 stating that the transaction was of a sale with condition to purchase and not one of mortgage. Original defendants No. 2, 3 and 4 supported the original defendant No.1 and they took a stand that they have relinquished their right in favour of defendant No.1. Learned Trail Judge passed the decree for the redemption which was challenged by the original defendant in Regular Appeal No. 105 of 1981 before the District Judge at Mehsana and as said above, learned Extra Assistant Judge came to the conclusion that the decree of the Trial Court was required to be set aside and suit was required to be remanded back to the Trial Court for fresh determination.

3. Learned Advocate Mr.J.C.Sheth for the appellants herein and learned advocate Mr.V.C.Desai for the respondents herein were heard.

4. Learned Advocate Mr.J.C.Sheth for the appellants attacked the judgment and decree impugned on various grounds. It was contended that the First Appellate Judge has erred in law in remanding the case and deciding other issues. It was urged that the First Appellate Judge ought to have decided all the issues while learned Advocate Mr. V.C. Desai has supported the judgment of decree impugned.

5. Going through the record and from the rival contentions, it is crystal clear that essentially it is required to be decided that the parties are governed by school of Muslim law whether Shia or Sunni and accordingly the mode of succession and inheritance according to law can be decided. However, the parties failed to plead or adduce evidence in this regard, nor the Trial Court attempted to examine this crucial issue to resolve the controversy between the parties. Not only that but in view of the admissions made by original Defendants No.2, 3 and 4 in their written statements, the Defendant No.1 might have acquired the interest in the suit property and this crucial issue and the effect of which has also not been decided by the Trial Court. The First Appellate Judge rightly felt that the Trial Court was required to decide these two crucial points to resolve the controversy between the parties and, therefore,the first Appellate Judge after setting aside the judgment and decree passed by the Trial Judge, remanded the suit to the trial court for fresh determination after raising the additional issues on the points as stated above. In this view of the matter, as such, no substantial question has arisen in this Second Appeal for determination. I do not find any illegality or infirmity in the judgment and decree passed by the first Appellate Judge on 25th August, 1983 so as to interfere with the same in this Second Appeal. In view of above discussion, the following order is passed :

" Appeal is dismissed. However, having regard to the age of this litigation, Trial Judge is directed to expedite and dispose of Regular Civil Suit No. 238 of 1975 in terms of judgement and decree passed by the learned Extra Assistant Judge on 25th August, 1993 in Regular Civil Appeal No. 105 of 1981, within six months from the date of receipt of writ of this Court or on producing a certified copy of this order by any of the parties before the Trial Court. No order as to costs. "

(J.R. Vora, J.)

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